

BARBER & ASSOCIATES, LLC
ATTORNEYS AT LAW
540 E. FIFTH AVENUE
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-5858
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Jeff Barber
Barber & Associates, LLC
540 E 5th Ave.
Anchorage, AK 99501
(907) 276-5858
jeffb@alaskainjury.com
Attorneys for Plaintiff

FILED
CLERK OF DISTRICT COURT
JULY 05 2020
CLERK OF DISTRICT COURT
Deputy

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT IN HOMER

JOEL MUMEY,)
)
Plaintiff,)
)
vs.)
)
STATE OF ALASKA, DEPT OF)
LAW and JUSTIN S. HILARIO,)
)
Defendants.)

Case No. 34-20-000834

COMPLAINT

The plaintiff JOEL MUMEY, by and through his attorneys Barber & Associates, LLC, and for his Complaint against STATE OF ALASKA, DEPT. OF LAW and JUSTIN S. HILARIO, hereby state and allege as follows:

THE PARTIES

1. At all times material hereto, the plaintiff was and is a resident of Ninilchick, Alaska.
2. At all times material hereto, the State of Alaska is a sovereign entity that has

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Page 1

consented to be sued through the Legislature's adoption of a statute.

3. At all times material hereto, JUSTIN HILARIO was and is an Alaska State Trooper and a resident of the Third Judicial District.

4. At all times material hereto, Justin Hilario was acting under color of law as an Alaska State Trooper.

JURISDICTION & VENUE

5. This Court has jurisdiction over this matter pursuant to AS 22.10.020.

6. Venue is proper because Plaintiff's cause of action accrued within the third judicial district.

GENERAL ALLEGATIONS

7. On June 29, 2019, Justin Hilario used excessive force when arresting the plaintiff in Ninilchik and transporting him to Homer, Alaska, causing serious injury to the plaintiff for which the defendants are liable.

8. The State is liable for the actions and/or failures to act of its employees under theories of vicarious liability and/or agency and/or respondeat superior.

9. At all times material hereto, Justin Hilario was employed by the State.

10. The Fourth Amendment guarantees the right to be free from unreasonable seizure.

11. The Eighth Amendment guarantees the right to be free from cruel and unusual punishment.

12. The defendants owed a duty to exercise reasonable care toward the plaintiff.
13. Justin Hilario was required to use reasonable force when handcuffing and handling the plaintiff.
14. Justin Hilario's negligence and/or gross negligence and/or recklessness and/or malicious conduct was a substantial factor in causing harm to the plaintiff for which the defendants are liable.
15. Justin Hilario was an agent of the State of Alaska.
16. Justin Hilario was acting under color of law in the course and scope of his duties for the State of Alaska and acting pursuant to its policies, customs and practices when he engaged in excessive force;
17. Justin Hilario was trained, and/or supervised and/or taught that using excessive force was objectively unreasonable and in violation of the plaintiff's rights;
18. Justin Hilario's handcuffing and handling the plaintiff was so forceful that he caused a left wrist radial styloid fracture and left shoulder injury to the plaintiff.
19. Justin Hilario's actions with respect to the plaintiff was offensive to human dignity;
20. The defendants are liable for actions which constitute cruel and unusual punishment in violation of the State and U.S. Constitutions and laws;
21. The defendants are liable for violating the rights of plaintiff to be free from cruel and unusual punishment guaranteed by the Alaska Constitution and the United States

Constitution, 8th Amendment to the U.S. Constitution, U.S. Statute 42 Section 1983, and United States of America Common Law.

22. The defendants are liable for violating the rights of plaintiff to be free from unreasonable seizure guaranteed by the Alaska Constitution and the United States Constitution, 4th Amendment to the U.S. Constitution, U.S. Statute 42 Section 1983, and United States of America Common Law.

23. Justin Hilario acted in a manner which was unreasonable because it created a great and unjustified and unnecessary danger of serious bodily injury of the plaintiff resulting in harm in violation of the plaintiff's constitutional rights;

24. The defendants engaged in reckless and capricious conduct that was unreasonable and/or unnecessarily dangerous and/or was with deliberate indifference and/or shocks the conscience;

25. The defendants' unreasonable, reckless, dangerous and unconstitutional actions without justification directly caused plaintiff to suffer great physical and emotional injury for which defendants are liable;

26. Justin Hilario's acts and omissions evidenced reckless disregard to the interests of plaintiffs and/or were outrageous and entitle plaintiffs to exemplary or punitive damages.

28. Justin Hilario is liable for assault and/or battery which was a substantial factor in causing harm to the plaintiff.

27. Justin Hilario's conduct with regard to the plaintiff was so egregious that any reasonable Trooper would have known this conduct was unlawful.

28. Justin Hilario's conduct regarding the plaintiff was willful, reckless, or intentional misconduct, or was done with gross negligence or malice, entitling plaintiff to damages, including punitive damages.

29. To the extent that Justin Hilario's misconduct described herein so clearly violated U.S. and Alaska law as to which he had clear notice, he was not acting within the scope of his employment, but merely under color of law.

30. The defendants are liable for past and/or future: medical expense, pain, suffering, emotional distress, loss of capacity for enjoyment of life, inconvenience, and other non-pecuniary damages to be more fully set forth at trial, all in an amount greater than \$100,000 (ONE HUNDRED THOUSAND DOLLARS), the exact amount to be set by the trier of fact.

31. The defendant Justin Hilario is liable for exemplary or punitive damages for conduct evidencing reckless disregard to the interests of the plaintiff and/or outrageous conduct.

32. The defendants are liable for full reasonable attorney fees pursuant to AS 09.17.060.

WHEREFORE, having fully pled plaintiff's complaint, the plaintiff requests a judgment against the defendants for an amount greater than \$100,000 (ONE HUNDRED

THOUSAND DOLLARS) to be established by the trier of fact, plus interest, costs and attorney fees and such other relief as the court deems just.

DATED at Anchorage, Alaska this 30th day of April, 2020.

BARBER & ASSOCIATES, LLC
Attorneys for Plaintiff

By: /s/ Jeff Barber
JEFF BARBER
AK Bar #0111058

CASE DESCRIPTION – SUPERIOR COURT

Case Number: 340-20-83C1

Type of Action		For Court Use Only	
Check the box that best describes the case. Mark one box only. For district court cases, use form CIV-125D.		Case Type	Action Code
Tort			
<input type="checkbox"/>	Wrongful Death	Civil Superior Court	CISPID
<input type="checkbox"/>	Automobile Tort (But Not Wrongful Death)	Civil Superior Court	CISIDA
<input type="checkbox"/>	Claim Against Owner of Real Property for Personal Injury	Civil Superior Court	CISPJO
<input type="checkbox"/>	Product Liability	Civil Superior Court	CISPL
<input type="checkbox"/>	Intentional Tort (e.g., assault, battery, vandalism)	Civil Superior Court	CISIT
<input type="checkbox"/>	Slander/Libel/Defamation	Civil Superior Court	CISSLD
<input checked="" type="checkbox"/>	Other Tort	Civil Superior Court	CISIDO
<input type="checkbox"/>	Approval of Minor Settlement – Civil Petition <i>May also be filed as probate case.</i>	Superior Court Misc Petition	CISPET
Malpractice			
<input type="checkbox"/>	Legal Malpractice	Civil Superior Court	CISLMP
<input type="checkbox"/>	Medical Malpractice	Civil Superior Court	CISMMP
<input type="checkbox"/>	Other Malpractice	Civil Superior Court	CISOMP
Other Civil			
<input type="checkbox"/>	Election Contest or Recount Appeal	Civil Superior Court	CISELE
<input type="checkbox"/>	Change of Name - Adult	Change of Name	CICON
<input type="checkbox"/>	Change of Name - Minor	Change of Name	CICONM
<input type="checkbox"/>	Confession of Judgment	Civil Superior Court	CISCONF
<input type="checkbox"/>	Structured Settlement – AS 09.60.200	Superior Court Misc Petition	CISSS
<input type="checkbox"/>	Administrative Agency Proceeding – Request for Court Assistance	Superior Court Misc Petition	CISWRNT
<input type="checkbox"/>	Arbitration - Action Under Uniform Arbitration Act	Civil Superior Court	CISAP
<input type="checkbox"/>	Fraud	Civil Superior Court	CISFRAUD
<input type="checkbox"/>	Unfair Trade Practice and Consumer Protection	Civil Superior Court Clerk: Issue form CIV-128	CISUTP
<input type="checkbox"/>	Writ of Habeas Corpus	Civil Superior Court	CIWHC
<input type="checkbox"/>	Fish & Game - Abatement & Forfeiture of Equipment	Superior Court Misc Petition	CISAF
<input type="checkbox"/>	Appointment of Trustee Counsel	Superior Court Misc Petition	CISTC
<input type="checkbox"/>	Other Superior Court Complaint	Civil Superior Court	CISOCI
<input type="checkbox"/>	Other Superior Court Petition	Superior Court Misc Petition	CISPET
Post-Conviction Relief to Superior Court			
<input type="checkbox"/>	Post-Conviction Relief	Post-Conviction Relief-Sup Ct	CISPCR
Appeal to Superior Court - From Administrative Agency			
<input type="checkbox"/>	Election Contest or Recount Appeal – SEE OTHER CIVIL		
<input type="checkbox"/>	DMV Appeal	Appeal from Admin Agency	CIADDMV
<input type="checkbox"/>	Employment Security Appeal	Appeal from Admin Agency	CIADRESA
<input type="checkbox"/>	Administrative Agency Appeal - Other	Appeal from Admin Agency	CIADR
<input type="checkbox"/>	CSSD License Review Action	Petition for Review or Relief	CICSED
<input type="checkbox"/>	Petition for Review from Administrative Agency	Petition for Review or Relief	CIPRA
<input type="checkbox"/>	Petition for Relief from Administrative Agency – AS 44.62.305	Petition for Review or Relief	CIPRLF
Appeal to Superior Court - From District Court			
<input type="checkbox"/>	Civil Appeal	Appeal from District Court	CIACI2
<input type="checkbox"/>	Criminal Appeal	Appeal from District Court	CIACRM
<input type="checkbox"/>	Minor Offense Appeal	Appeal from District Court	CIAMO
<input type="checkbox"/>	Small Claims Appeal	Appeal from District Court	CIASC
<input type="checkbox"/>	Petition for Review from Civil, Criminal, or Minor Offense Case	Petition for Review or Relief	CIPRD2
<input type="checkbox"/>	Petition for Review from Small Claims	Petition for Review or Relief	CIPRSC

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Homer

JOEL MUMEY

vs.

STATE OF ALASKA and
JUSTIN S. HILARIO

Plaintiff(s),

Defendant(s).

CASE NO. 3HO-20-00083 CI

**SUMMONS
AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: STATE OF ALASKA

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at (address): 3670 Lake St. Bldg A, Homer, AK 99603 within 20 days* after the day you receive this summons.

In addition, a copy of your answer must be sent to:

Plaintiff's attorney or plaintiff (if unrepresented): JEFF BARBER

Address: 540 E Fifth Avenue, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf>, to inform the court.

-OR-

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

To: Plaintiff and Defendant

This case has been assigned to Judge Bride Seifert.

(SEAL)

CLERK OF COURT

By: Shapira

Deputy Clerk

5-12-2020
Date

*The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 (10/17)(cs)

Civil Rules 4, 5, 12, 42(c), 55

SUMMONS

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT Homer

JOEL MUMEY

vs.

STATE OF ALASKA and
JUSTIN S. HILARIO

Plaintiff(s),

Defendant(s).

CASE NO. 3HO-20-00083 CI

**SUMMONS
AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: JUSTIN S. HILARIO

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at (address): 3670 Lake St. Bldg A, Homer, AK 99603 within 20 days* after the day you receive this summons.

In addition, a copy of your answer must be sent to:

Plaintiff's attorney or plaintiff (if unrepresented): JEFF BARBER

Address: 540 E Fifth Avenue, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf>, to inform the court.

-OR-

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

To Plaintiff and Defendant

This case has been assigned to Judge Bride Scifert.

CLERK OF COURT

By: Shipilin
Deputy Clerk

Date 8-12-2020

The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 (10/17)(cs)

Civil Rules 4, 5, 12, 42(c), 55

SUMMONS

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

JOEL MUMEY,

Plaintiff,

vs.

STATE OF ALASKA, DEPT OF
LAW and JUSTIN S. HILARIO,

Defendant.

RECEIVED

JUL 07 2020

LAW-CIVIL

Case No. 3HO-20-00083 CI

AFFIDAVIT OF CIVIL RULE 4 PROCESS

STATE OF ALASKA)

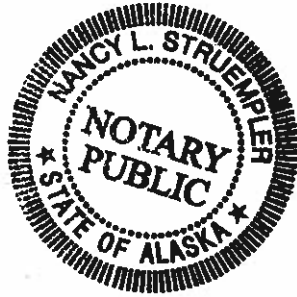
THIRD JUDICIAL DISTRICT)

) ss:

I, Angela C. Miller, being duly sworn, do hereby state as follows: That I am employed at BARBER & ASSOCIATES, LLC; that pursuant to Exhibit 1 attached hereto, a copy of the Summons and Complaint was served by certified mail to defendant State of Alaska, Department of Law on May 22, 2020 and pursuant to Exhibit 2 attached hereto, a copy of the Summons and Complaint was served by North Country Process to defendant Justin S. Hilario on June 28, 2020; that the defendants in this action have been served.

Angela C. Miller
Angela C. Miller

SUBSCRIBED AND SWORN to before me this 6 day of July, 2020.



Nancy L. Struempfer
Notary Public in and for Alaska
My Commission Expires: 08-04-22


CERTIFICATE OF SERVICE

This is to certify that on this
date a copy of the foregoing was
served by (X) mail () fax () hand
to:

Kevin Clarkson, AG
State of Alaska
Department of Law
1031 W Fourth Ave., Suite 200
Anchorage, AK 99501

Justin Hilario
PO Box 1926
Homer, AK 99603

Angie Miller 7.6.20
Angie Miller Date

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>KEVIN CLARKSON, ATTY GENERAL STATE OF ALASKA, DEPT OF LAW 1031 W 4TH AVE STE 200 ANCHORAGE, AK 99501</p>  <p>9590 9402 4285 8190 9809 30</p> <p>2. Article Number (Transfer from service label) 117 2680 0000 8851 9077</p>		<p>A. Signature X OAG <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) AJC92 C19</p> <p>C. Date of Delivery 5/22/20</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																		
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™																		
<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery																		
<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise																		
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<input type="checkbox"/> Insured Mail																			
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																			

Domestic Return Receipt

EXHIBIT _____
Page _____ of _____

5
RECEIVED

JUL 02 2020

BARBER & ASSOCIATES, LLC

AFFIDAVIT - RETURN OF SERVICE

JOEL MUMEY

Plaintiff(s),

Case Number: 3HO-20-00083 CI

FILE STAMP

vs.

STATE OF ALASKA AND JUSTIN S. HILARIO

Defendant(s).

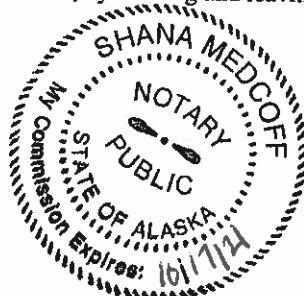
I solemnly swear or affirm that on 6/28/2020, at 11:58 AM, I served the following documents:

SUMMONS AND NOTICE TO BOTH PARTIES OF JUDICIAL ASSIGNMENT, LETTER, COMPLAINT

upon the therein named JUSTIN S. HILARIO at MEETING PLACE: HOMER POST OFFICE, 3658 HEATH STREET, HOMER, ALASKA 99603, by handing and leaving a true and correct copy with JUSTIN S. HILARIO.

Process Server Notes:

RESEARCH



Ann E. Hoffman
ANN E. HOFFMAN

Civilian Process Server

SUBSCRIBED AND SWORN to or affirmed before me this June 30, 2020 in Soldotna, Alaska.

Shana Medcoff
Notary Public in and for the State of Alaska
My Commission Expires: 10/17/21

Client: BARBER & ASSOCIATES, LLC

Client Contact: ANGIE MILLER

File Number:

North Country Process, Inc.

P.O. Box 101126

Anchorage, Alaska 99510

Office: (907) 274-2023

Fax Line: (907) 274-2823

NCPI@alaska.net

Return No.: 193900

Service Fee [Rule 11(a)(1)(i/ii)]:	\$45.00
Mileage Fee [Rule 11(a)(7)]:	\$20.00
Fee for Excess Mileage [Rule 11(a)(7)]:	\$69.00
Total miles traveled to obtain service:	163
Fee for Excess Hours [Rule 11(a)(1)(iii)]:	\$37.50
Total hours to obtain service:	3.25

Total Recoverable Fees per Admin Rule 11:	\$171.50
Research Fee:	\$30.00
Non-Recoverable Tax:	\$13.46
Total Non-Recoverable Fees per Admin Rule 11:	\$43.46
Total Service Fees:	\$214.96

Exhibit 2
Page 1 **of** 1

JOEL MUMEY,

Plaintiff,

v.

STATE OF ALASKA, DEPT OF LAW
and JUSTIN S. HILARIO,

Defendants.

KEVIN G. CLARKSON
ATTORNEY GENERAL

Mark Cucci (Alaska Bar No. 0311047)
Assistant Attorney General
Department of Law
1031 West Fourth Avenue, Ste. 200
Anchorage, AK 99501
Telephone: (907) 269-5190
Facsimile: (907) 258-0760
Email: mark.cucci@alaska.gov

Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JOEL MUMEY,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 3:20-cv-_____
)	State Court Case No. 3HO-20-00083CI
STATE OF ALASKA, DEPT OF LAW)	
and JUSTIN S. HILARIO,)	DEFENDANT'S NOTICE OF
)	REMOVAL
Defendants.)	

Pursuant to 28 USC §§ 1441 and 1446, defendant Justin S. Hilario, through counsel, notifies the Court of the removal of the above-captioned case from the Superior Court for the State of Alaska, Third Judicial District at Homer, Case No. 3HO-20-00083 CI. Removal is based on the following:

Plaintiff Joel Mumey filed a lawsuit against Trooper Hilario and State of Alaska, Department of Law, alleging various state and federal law claims.

1. The action is one over which this court has original jurisdiction under the provisions of 28 U.S.C. Section 1331, and is one which may be removed to this court pursuant to the provisions of 28 U.S.C. Section 1441, in that it is a civil action arising under the Constitution, laws, or treaties of the United States.
2. Written notice of this filing will promptly be given to all adverse parties as required by 28 U.S.C. § 1446(d).

A Notice to State Court of Removal will be filed in the Superior Court for the State of Alaska, in the Third Judicial District at Homer, Case No. 3HO-20-00083 CI.

1. Plaintiff filed a civil action entitled *Joel Mumey v. State of Alaska, Department of Law and Justin H. Hilario*, Case No. 3HO-20-00083 CI, in Superior Court, for the State of Alaska, Third Judicial District. A copy of the Complaint is attached hereto as Exhibit A.

2. The federal district court has original jurisdiction over this civil action pursuant to 28 U.S.C. § 1331 because the complaint alleges violations of the United States Constitution and 42 U.S.C. § 1983. Federal question jurisdiction is available to entertain claims arising under the Constitution and laws of the United States. See 28 U.S.C. § 1331.

3. This notice of removal is timely under 28 U.S.C. § 1446(b). The Complaint filed in Alaska Superior Court, Case No. 3HO-20-00083 CI, and copies of the

summons were received by Trooper Hilario on June 30, 2020. Less than thirty (30) days has elapsed since the receipt of the Complaint and notice of the federal claims.

4. Written notice of the filing of this Notice of Removal will be filed simultaneously herewith with the Clerk of Trial Courts, Third Judicial District, State of Alaska, along with a copy of this Notice of Removal. Written notice of the filing of the notice for removal will also be served on Plaintiff.

5. The other defendant in this lawsuit, State of Alaska Department of Law, has not yet been served with the summons and complaint pursuant to Alaska Rule of Civil Procedure 4(d)(7)(8). The Attorney General's Office usually represents state agencies in similar lawsuits. An entry and answer will be filed if and when service of process is completed. A copy of Plaintiff's Civil Rule 4 Affidavit of Service is attached as Exhibit B.

Petitioner requests that the above-entitled action be removed from the Superior Court for the State of Alaska, Third Judicial District, to the United States District Court for the District of Alaska.

DATED: July 20, 2020.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By: /s/Mark Cucci
Mark Cucci
Assistant Attorney General
Alaska Bar No. 0311047
Department of Law
1031 West Fourth Avenue, Ste. 200
Anchorage, AK 99501

Mumey v. SOA, et al.
Defendant's Notice of Removal

Case No.: 3:20-cv-_____
Page 3 of 4

Phone: (907) 269-5190
Facsimile: (907) 258-0760
Email: mark.cucci@alaska.gov
Attorney for Defendants

Certificate of Service

I certify that on July 20, 2020 the foregoing **Defendant's Notice of Removal** was served electronically on:

Jeffrey J. Barber
Barber and Associates, LLC
540 East Fifth Avenue
Anchorage, AK 99501
jeffb@alaskainjury.com

/s/Mark Cucci

Mark Cucci, Assistant Attorney General

Mumey v. SOA, et al.
Defendant's Notice of Removal

Case No.: 3:20-cv-_____
Page 4 of 4

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RECEIVED

JUL 02 2020

BARBER & ASSOCIATES, LLC

AFFIDAVIT - RETURN OF SERVICE

JOEL MUMEY

Plaintiff(s),

Case Number: 3HO-20-00083 CI

FILE STAMP

vs.

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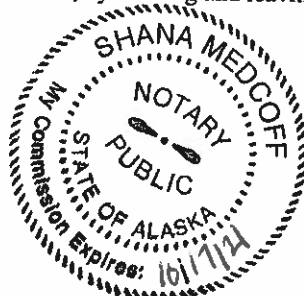
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Process Server Notes:

RESEARCH



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ANN E. HOFFMAN

Civilian Process Server

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Shana Medcoff
Notary Public in and for the State of Alaska
My Commission Expires: 10/17/21

Client: BARBER & ASSOCIATES, LLC

Client Contact: ANGIE MILLER

File Number:

North Country Process, Inc.

P.O. Box 101126

Anchorage, Alaska 99510

Office: (907) 274-2023

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NCPI@alaska.net

Return No.: 193900

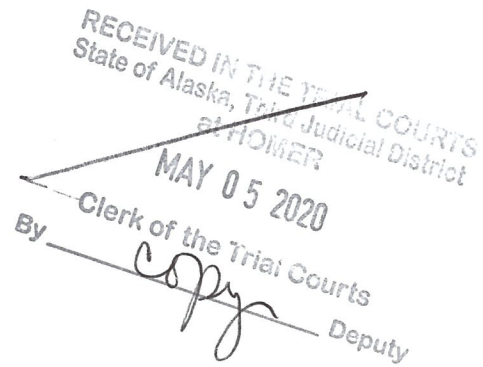
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Total Non-Recoverable Fees per Admin Rule 11:	\$43.46
Total Service Fees:	\$214.96

Exhibit A, Page 1 of 7

Exhibit 2
Page 1 of 1

Jeff Barber
Barber & Associates, LLC
540 E 5th Ave.
Anchorage, AK 99501
(907) 276-5858
jeffb@alaskainjury.com
Attorneys for Plaintiff



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT IN HOMER

JOEL MUMEY,)
)
Plaintiff,)
)
vs.)
)
STATE OF ALASKA, DEPT OF)
LAW and JUSTIN S. HILARIO,)
)
Defendants.)

Case No. 34b-20-00083C1

COMPLAINT

The plaintiff JOEL MUMEY, by and through his attorneys Barber & Associates, LLC, and for his Complaint against STATE OF ALASKA, DEPT. OF LAW and JUSTIN S. HILARIO, hereby state and allege as follows:

THE PARTIES

1. At all times material hereto, the plaintiff was and is a resident of Ninilchick, Alaska.
2. At all times material hereto, the State of Alaska is a sovereign entity that has

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consented to be sued through the Legislature's adoption of a statute.

3. At all times material hereto, JUSTIN HILARIO was and is an Alaska State Trooper and a resident of the Third Judicial District.

4. At all times material hereto, Justin Hilario was acting under color of law as an Alaska State Trooper.

JURISDICTION & VENUE

5. This Court has jurisdiction over this matter pursuant to AS 22.10.020.

6. Venue is proper because Plaintiff's cause of action accrued within the third judicial district.

GENERAL ALLEGATIONS

7. On June 29, 2019, Justin Hilario used excessive force when arresting the plaintiff in Ninilchik and transporting him to Homer, Alaska, causing serious injury to the plaintiff for which the defendants are liable.

8. The State is liable for the actions and/or failures to act of its employees under theories of vicarious liability and/or agency and/or respondeat superior.

9. At all times material hereto, Justin Hilario was employed by the State.

10. The Fourth Amendment guarantees the right to be free from unreasonable seizure.

11. The Eighth Amendment guarantees the right to be free from cruel and unusual punishment.

12. The defendants owed a duty to exercise reasonable care toward the plaintiff.
13. Justin Hilario was required to use reasonable force when handcuffing and handling the plaintiff.
14. Justin Hilario's negligence and/or gross negligence and/or recklessness and/or malicious conduct was a substantial factor in causing harm to the plaintiff for which the defendants are liable.
15. Justin Hilario was an agent of the State of Alaska.
16. Justin Hilario was acting under color of law in the course and scope of his duties for the State of Alaska and acting pursuant to its policies, customs and practices when he engaged in excessive force;
17. Justin Hilario was trained, and/or supervised and/or taught that using excessive force was objectively unreasonable and in violation of the plaintiff's rights;
18. Justin Hilario's handcuffing and handling the plaintiff was so forceful that he caused a left wrist radial styloid fracture and left shoulder injury to the plaintiff.
19. Justin Hilario's actions with respect to the plaintiff was offensive to human dignity;
20. The defendants are liable for actions which constitute cruel and unusual punishment in violation of the State and U.S. Constitutions and laws;
21. The defendants are liable for violating the rights of plaintiff to be free from cruel and unusual punishment guaranteed by the Alaska Constitution and the United States

Constitution, 8th Amendment to the U.S. Constitution, U.S. Statute 42 Section 1983, and United States of America Common Law.

22. The defendants are liable for violating the rights of plaintiff to be free from unreasonable seizure guaranteed by the Alaska Constitution and the United States Constitution, 4th Amendment to the U.S. Constitution, U.S. Statute 42 Section 1983, and United States of America Common Law.

23. Justin Hilario acted in a manner which was unreasonable because it created a great and unjustified and unnecessary danger of serious bodily injury of the plaintiff resulting in harm in violation of the plaintiff's constitutional rights;

24. The defendants engaged in reckless and capricious conduct that was unreasonable and/or unnecessarily dangerous and/or was with deliberate indifference and/or shocks the conscience;

25. The defendants' unreasonable, reckless, dangerous and unconstitutional actions without justification directly caused plaintiff to suffer great physical and emotional injury for which defendants are liable;

26. Justin Hilario's acts and omissions evidenced reckless disregard to the interests of plaintiffs and/or were outrageous and entitle plaintiffs to exemplary or punitive damages.

28. Justin Hilario is liable for assault and/or battery which was a substantial factor in causing harm to the plaintiff.

27. Justin Hilario's conduct with regard to the plaintiff was so egregious that any reasonable Trooper would have known this conduct was unlawful.

28. Justin Hilario's conduct regarding the plaintiff was willful, reckless, or intentional misconduct, or was done with gross negligence or malice, entitling plaintiff to damages, including punitive damages.

29. To the extent that Justin Hilario's misconduct described herein so clearly violated U.S. and Alaska law as to which he had clear notice, he was not acting within the scope of his employment, but merely under color of law.

30. The defendants are liable for past and/or future: medical expense, pain, suffering, emotional distress, loss of capacity for enjoyment of life, inconvenience, and other non-pecuniary damages to be more fully set forth at trial, all in an amount greater than \$100,000 (ONE HUNDRED THOUSAND DOLLARS), the exact amount to be set by the trier of fact.

31. The defendant Justin Hilario is liable for exemplary or punitive damages for conduct evidencing reckless disregard to the interests of the plaintiff and/or outrageous conduct.

32. The defendants are liable for full reasonable attorney fees pursuant to AS 09.17.060.

WHEREFORE, having fully pled plaintiff's complaint, the plaintiff requests a judgment against the defendants for an amount greater than \$100,000 (ONE HUNDRED

BARBER & ASSOCIATES, LLC
ATTORNEYS AT LAW
540 E. FIFTH AVENUE
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-5858
FAX: (907) 276-5817

THOUSAND DOLLARS) to be established by the trier of fact, plus interest, costs and attorney fees and such other relief as the court deems just.

DATED at Anchorage, Alaska this 30th day of April, 2020.

BARBER & ASSOCIATES, LLC
Attorneys for Plaintiff

By: /s/ Jeff Barber
JEFF BARBER
AK Bar #0111058

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT HOMER

JOEL MUMEY,

Plaintiff,

vs.

STATE OF ALASKA, DEPT OF
LAW and JUSTIN S. HILARIO,

Defendant.

RECEIVED

JUL 07 2020

LAW-CIVIL

Case No. 3HO-20-00083 CI

AFFIDAVIT OF CIVIL RULE 4 PROCESS

STATE OF ALASKA)

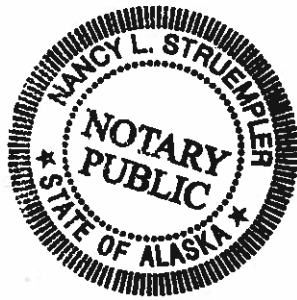
THIRD JUDICIAL DISTRICT)

) ss:

I, Angela C. Miller, being duly sworn, do hereby state as follows: That I am employed at BARBER & ASSOCIATES, LLC; that pursuant to Exhibit 1 attached hereto, a copy of the Summons and Complaint was served by certified mail to defendant State of Alaska, Department of Law on May 22, 2020 and pursuant to Exhibit 2 attached hereto, a copy of the Summons and Complaint was served by North Country Process to defendant Justin S. Hilario on June 28, 2020; that the defendants in this action have been served.

Angela C. Miller
Angela C. Miller

SUBSCRIBED AND SWORN to before me this 6 day of July, 2020.



Nancy L. Struempfer
Notary Public in and for Alaska
My Commission Expires: 08-04-22


CERTIFICATE OF SERVICE

This is to certify that on this
date a copy of the foregoing was
served by (X) mail () fax () hand
to:

Kevin Clarkson, AG
State of Alaska
Department of Law
1031 W Fourth Ave., Suite 200
Anchorage, AK 99501

Justin Hilario
PO Box 1926
Homer, AK 99603

Angie Miller 7.6.20
Angie Miller Date

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY																	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>KEVIN CLARKSON, ATTY GENERAL STATE OF ALASKA, DEPT OF LAW 1031 W 4TH AVE STE 200 ANCHORAGE, AK 99501</p>  <p>9590 9402 4285 8190 9809 30</p> <p>2. Article Number (Transfer from service label) 117 2680 0000 8851 9077</p>		<p>A. Signature X OAG <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) AJC92 C19</p> <p>C. Date of Delivery 5/22/20</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
		<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input checked="" type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®																		
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<input type="checkbox"/> Insured Mail																			
<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)																			

Domestic Return Receipt

EXHIBIT _____
Page _____ of _____

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RECEIVED

JUL 02 2020

BARBER & ASSOCIATES, LLC

AFFIDAVIT - RETURN OF SERVICE

JOEL MUMEY

Plaintiff(s),

Case Number: 3HO-20-00083 CI

FILE STAMP

vs.

STATE OF ALASKA AND JUSTIN S. HILARIO

Defendant(s).

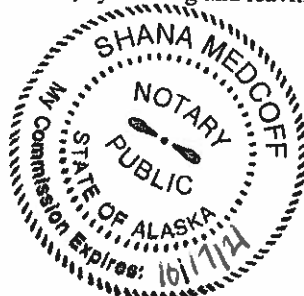
I solemnly swear or affirm that on 6/28/2020, at 11:58 AM, I served the following documents:

SUMMONS AND NOTICE TO BOTH PARTIES OF JUDICIAL ASSIGNMENT, LETTER, COMPLAINT

upon the therein named JUSTIN S. HILARIO at MEETING PLACE: HOMER POST OFFICE, 3658 HEATH STREET, HOMER, ALASKA 99603, by handing and leaving a true and correct copy with JUSTIN S. HILARIO.

Process Server Notes:

RESEARCH



Ann E. Hoffman
ANN E. HOFFMAN

Civilian Process Server

SUBSCRIBED AND SWORN to or affirmed before me this June 30, 2020 in Soldotna, Alaska.

Shana Medcoff
Notary Public in and for the State of Alaska
My Commission Expires: 10/17/21

Client: BARBER & ASSOCIATES, LLC

Client Contact: ANGIE MILLER

File Number:

North Country Process, Inc.

P.O. Box 101126

Anchorage, Alaska 99510

Office: (907) 274-2023

Fax Line: (907) 274-2823

NCPI@alaska.net

Return No.: 193900

Service Fee [Rule 11(a)(1)(i/ii)]:	\$45.00
Mileage Fee [Rule 11(a)(7)]:	\$20.00
Fee for Excess Mileage [Rule 11(a)(7)]:	\$69.00
Total miles traveled to obtain service:	163
Fee for Excess Hours [Rule 11(a)(1)(iii)]:	\$37.50
Total hours to obtain service:	3.25

Total Recoverable Fees per Admin Rule 11:	\$171.50
Research Fee:	\$30.00
Non-Recoverable Tax:	\$13.46
Total Non-Recoverable Fees per Admin Rule 11:	\$43.46
Total Service Fees:	\$214.96

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Exhibit 2
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